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11 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

12 FAYE IRENE GUENTHER,
13 an individual,

14 Plaintiff,

15 v.

16 JOSEPH H. EMMONS, individually,
AND OSPREY FIELD CONSULTING
17 LLC, a limited liability company,

18 Defendants.
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No. 2:22-cv-00272-TOR

JOINT STATUS REPORT AND
DISCOVERY PLAN

1 Pursuant to the Court's June 30, 2023, Second Order Setting Telephonic
2 Scheduling Conference (Dkt. 27), Plaintiff Faye Irene Guenther and Defendants
3 Joseph H. Emmons and Osprey Field Consulting LLC submit the following Joint
4 Rule 26(f) Report and Proposed Discovery Plan.

5 Pursuant to Federal Rule of Civil Procedure 26(f), the parties, through their
6 attorneys, conferred on June 16, 2023, and July 10, 2023. In the first conference,
7 James McGuinness and Aaron Streepy represented Plaintiff, and Ambika Kumar,
8 Sara A. Fairchild, and John DiLorenzo represented Defendants. In the second
9 conference, Mr. McGuinness represented Plaintiff, and Ms. Fairchild represented
10 Defendants.

11 The parties jointly submit this report setting forth the parties' agreements
12 and respective positions.

13 a. Jurisdiction and Venue: Defendants removed this case from Spokane
14 County Superior Court on November 9, 2022. Dkt. 1. This Court has diversity
15 jurisdiction pursuant to 28 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. §
16 1441(a) because the Eastern District of Washington, Spokane Division, is the
17 federal judicial district and division embracing Spokane County Superior Court,
18 where this case was pending prior to removal. The parties agree that neither
19 jurisdiction nor venue is in dispute.

20 b. Service of Process: All Defendants have been served.

1 c. Claims and Defenses: Plaintiff asserts claims for defamation and false
2 light invasion of privacy based on a flyer that Defendants allegedly distributed.
3 The flyer urged members of the United Food and Commercial Workers (UFCW)
4 union to vote against a proposed merger between UFCW 21 and UFCW 1439 and
5 contained the following statements: “First Faye Gunther [sic] (President of Local
6 21) helped former 367 President Angel Gonzalez cover up his harassment charges
7 and paid him off in exchange for installing her puppet, Mike Hines,” and “Now
8 she’s helping Eric Renner (the Local 1439 President) hide from sexual harassment
9 charges and land a cushy new gig with Local 21 through a forced merger.”
10 Plaintiff, who is President of UFCW 3000 (the union formed as a result of the
11 successful merger), alleges these statements accuse her of helping two other Union
12 officials hide and cover up their unlawful conduct and bribing one of those
13 officials. Plaintiff alleges Defendants published the flyer negligently and either
14 knew the statements are false or acted with reckless disregard for the truth or
15 falsity of their statements.
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18 Defendants contend that Plaintiff’s claims fail on at least three independent
19 grounds: (1) The flyer lacks a false statement of fact—a necessary element of a
20 defamation or false light claim. Given the context of the proposed merger, the
21 language and appearance of the flyer, and the fact that the audience consisted of
22 union members, the flyer’s statements are nonactionable opinion. To the extent the
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1 statements assert facts, they are true. (2) Defendants did not publish the statements
2 with actual malice. As President of UFCW 21 and 3000, and given her role in the
3 merger, Plaintiff is a limited public figure for purposes of the merger of UFCW 21
4 and 1439. Therefore, to prevail on her claims, she must show actual malice—i.e.,
5 that Defendants knew the flyer’s statements were false or had serious doubts about
6 their truth. She cannot do so. (3) Plaintiff cannot show the requisite damages.

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8 d. Statute Constitutionality: Neither party anticipates challenging the
9 constitutionality of a statute. Plaintiff reserves the right to make such a challenge
10 in response to a dispositive motion brought under RCW 4.105.

11 e. Certification to State Supreme Court: At this time, the parties have
12 not identified any issues that should be certified to a state supreme court. Plaintiff
13 believes such issues may be raised in the event a dispositive motion is brought
14 under RCW 4.105.

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16 f. Suggested Deadline for Additional Parties, Amending Pleadings,
17 Class Certification: Plaintiff does not intend to seek class certification. The
18 parties suggest that the Court enter a deadline of March 1, 2024 for adding
19 additional parties and amending the pleadings.

20 g. Corporate Ownership Statement: None of the remaining parties to
21 this case is a non-government corporation.
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1 h. Minor or Incompetent Party: This case does not involve a minor or
2 incompetent party.

3 i. Discovery:

4 • Initial Disclosures: The parties confirm that Rule 26(a)(1) initial
5 disclosures will be exchanged on or before July 13, 2023, which is before the
6 scheduling conference.

7 • Subjects of Discovery: Plaintiff intends to submit written discovery
8 requests to Defendants. Plaintiff also intends to serve subpoenas on two non-
9 parties to the case, specifically, Michael Selvaggio, United Food and Commercial
10 Workers Union, Local No. 555, and/ or its President, Dan Clay. At this time,
11 Plaintiff intend to depose the Defendant Joseph Emmons and the appropriate
12 corporate agent of Defendant Osprey Field Consulting LLC. Plaintiffs may also
13 seek to depose Michael Selvaggio, Ridgelark Strategies LLC, Esai Alday, Miles
14 Eshaia, and Dan Clay. Plaintiff intends to seek discovery on the following
15 subjects:
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- 18 - Identification of all persons and business entities involved in the
19 development, creation, production, distribution, and mailing of the
20 flyer identified in Plaintiff's complaint (hereafter "the involved
21 parties" or "the involved activities"). Once identified, discovery into
22 the role each involved party played in such involved activities relating
23 to the flyer;
- Discovery probing all verbal and written communications between the
involved parties regarding statements in the flyer, including electronic

1 communications, text messages, phone records and communications
2 through social media accounts.

- 3 - Discovery concerning the nature of the relationship(s) between the
4 involved parties, including any business relationships or other
5 financial consideration provided or received in connection with
6 involved activities involving the flyer. Such discovery may include
7 ascertaining any relationship between the involved parties and UFCW
8 Locals 1439 and 21.
- 9 - Discovery concerning the involved parties' motivations for engaging
10 in activities relating to the flyer, including animus toward Guenther
11 and their own personal or business-related pecuniary gain.
- 12 - Discovery concerning communications between the involved parties
13 relating to this litigation either before or after it was actually filed,
14 including any third-party payor relationship or related agreements
15 between parties to this case and any other involved parties.

16 Defendants intend to conduct both written discovery and depositions of Plaintiff
17 Guenther, Jeff Anderson, Angel Gonzalez, and Eric Renner, among others.

18 Defendants intend to seek discovery on the issues raised in Plaintiff's Complaint
19 and Defendants' defenses, including the following topics:

- 20 - Complaints against Plaintiff Guenther, Angel Gonzalez, and Eric
21 Renner, including any UFCW International investigation into them
- 22 - Communications and relationship between Plaintiff Guenther and
23 Angel Gonzalez, Mike Hines, Eric Renner, and Jeff Anderson
- UFCW 21 and UFCW 1439's initiation of the merger, including the
request for approval from UFCW International, the negotiation of the
merger agreement, the executive board meetings concerning the
merger, and all other merger discussions among union leadership
- UFCW 21's, UFCW 1439's, and Plaintiff Guenther's investigation
into the flyer
- Social media posts concerning the proposed merger and the flyer

- Communications between UFCW 3000, UFCW 21, and UFCW 1439 leadership and members concerning the proposed merger and the flyer
- Plaintiff Guenther's access to channels of communication, including campaigning, blog posts, newsletters, media appearances, interviews, and speaking engagements
- Plaintiff Guenther's alleged damages

- Preservation of Discoverable Information: The parties have taken steps and are continuing to take steps to preserve discoverable information.

- Privilege and Confidentiality: The parties anticipate jointly preparing and requesting the Court enter a stipulated protective order governing the production, disclosure, and treatment of confidential material and information produced or provided in discovery. The parties may assert the attorney-client privilege, attorney work product doctrine, and/or other privileges, as applicable. The parties agree that attorney-client-privileged communications between the parties, including dismissed parties, and their litigation counsel generated before and after filing of this lawsuit and responsive to discovery requests need not be listed on a privilege log by either side.

- Agreements Under Fed. R. Evid. 502: If either party claims that it inadvertently disclosed privileged or work product materials or information, the parties will follow the procedure set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The parties agree that further agreement on this topic is not necessary.

1 • Proposed Modifications to Standard Discovery Procedures: The
2 parties do not propose any modifications to the standard discovery procedures.

3 • Suggested Expert Disclosure Deadlines: The parties suggest the
4 Court enter a deadline of January 12, 2024, for initial expert disclosures and a
5 deadline of February 9, 2024, for rebuttal expert disclosures.

6 • Suggested Discovery Cut-Off: The parties suggest the Court enter a
7 deadline of March 1, 2024, to complete all discovery.

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9 j. Anticipated Motions and Suggested Dispositive Motion Filing
10 Deadlines: The parties may bring motions for summary judgment or partial
11 summary judgment at or before the conclusion of discovery. Defendants may file
12 a motion under Washington's Uniform Public Expression Protection Act, RCW
13 4.105, following some discovery. The parties suggest the Court enter a deadline of
14 April 15, 2024, for all dispositive motions.

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16 k. Trial:

17 • Jury Request: Plaintiff has requested a jury trial. Dkt. 6.
18 • Suggested Trial Date(s) and Location: The parties suggest the trial be
19 set to begin on October 2, 2024, at the Thomas S. Foley United States Courthouse
20 in Spokane, Washington.

21 • Anticipated Length of Trial: The parties estimate that the trial will
22 take 5-7 days.
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1 • Requests for Bifurcation: The parties request to bifurcate the trial
2 between liability and damages issues.

3 • Need for Special Audio/Visual Courtroom Technology: At this time,
4 Defendants anticipate needing a digital screen to display exhibits during trial.

5 1. Settlement: Plaintiff believes that some facts, including the identity of
6 additional defendants, will be identified during discovery and that mediation would
7 not have a significant possibility of achieving an early and inexpensive resolution
8 prior to at least limited discovery. Plaintiffs propose that meaningful dispute
9 resolution is appropriate after the deadline for joining additional parties.

10 Defendants are willing to engage in private mediation after discovery is complete,
11 but do not believe mediation would be productive at this time. The parties will
12 continue to assess the viability of mediation as the case proceeds.

13 m. Other Matters: Electronic service – On August 22, 2022, when this
14 case was pending in Spokane County Superior Court, the parties entered an
15 electronic service agreement. Now that the case has been removed to this Court,
16 the parties agree that for purposes of service and computation of response
17 deadlines under the Local Rules, filing by ECF will constitute service on the date
18 ECF automated notification is sent. For service of all other documents, including
19 discovery requests and responses, the parties agree that electronic service via e-
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1 mail shall constitute sufficient service, provided the document is sent to all e-mail
2 addresses identified by counsel, including counsel's legal assistants.

3 DATED this 13th day of July, 2023.

4 Attorneys for Plaintiff

Attorneys for Defendants

5
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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2023, I caused the document to which this certificate is attached to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff Faye Irene Guenther

I declare under penalty of perjury that the foregoing is true and accurate.

DATED this 13th day of July, 2023.

By: s/ Sara A. Fairchild

Sara A. Fairchild, WSBA #54419